MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

SIDNEY FLAXMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

REPLY TO MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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In response to Petitioner's argument that a scheme to defraud the State of Illinois through the filing of understated State sales tax returns is not within the ambit of federal criminal jurisdiction generally, and the federal mail fraud statute in particular, the Government cites *Bartkus* v. *Illinois*, 359 U.S. 121, and *Abbate* v. *United States*, 359 U.S. 187. (Memorandum of the United States in Opposition, P. 3) We reply to the Government's memorandum because neither *Bartkus* v. *Illinois*, supra, nor *Abbate* v.

United States, supra, is in point, and because the Government has ignored the substance of Petitioner's contention that utilization of the mail fraud statute to reach the conduct of Petitioner represents a drastic expansion of federal criminal jurisdiction into areas best left to the sovereign states.

Bartkus v. *Illinois,* supra, and *Abbate* v. *United States,* supra, hold that successive state and federal prosecutions for conduct at once violative of both federal and state laws is not barred by the Fifth Amendment to the Constitution of the United States. Here there has been no prior state prosecution. Further, in neither *Bartkus* nor *Abbate* was an issue raised as to the federal government's interest in the prosecution. In *Abbate* v. *United States,* supra, the defendant was charged with conspiring to destroy telephone transmission lines, which were "essential and integral parts of systems and means of communication operated and controlled by the United States." In *Bartkus* v. *Illinois,* supra, the charge was robbery of a federally insured savings and loan association. Here, the question is whether the federal government may reach Petitioner's conduct, where the alleged scheme is one to defraud the State of Illinois; where the State of Illinois had enacted a statutory scheme for enforcement of its own revenue laws; and where the only "damage" to a federal interest is a fictional "contamination" of the United States mail through transmission of allegedly fraudulent documents

Citation to *Bartkus* and *Abbate* as authority for the proposition that the federal government could maintain this prosecution is thus inappropriate. The issue raised for the Court's consideration is whether, where the nexus between the alleged crime and a federal interest is so

attenuated as to be a fiction and the alleged crime is one traditionally within the domain of a sovereign state, the federal government may prosecute at all.

For the reasons stated in our Petition, we respectfully urge the Court to consider this issue.

Respectfully submitted,

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